

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TAMMY KITZMILLER; BRYAN AND
CHRISTY REHM; DEBORAH
FENIMORE AND JOEL LIEB; STEVEN
STOUGH; BETH EVELAND; CYNTHIA
SNEATH; JULIE SMITH; AND ARALENE
("BARRIE") D. AND FREDERICK B.
CALLAHAN,

Plaintiffs,

v.

DOVER AREA SCHOOL DISTRICT;
DOVER AREA SCHOOL DISTRICT
BOARD OF DIRECTORS,

Defendants.

Civil Action No. 04-CV-2688

Honorable John E. Jones III

Plaintiffs' Proposed Stipulations of Fact

PLAINTIFFS' PROPOSED STIPULATIONS OF FACT

1. The Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over plaintiffs' causes of action arising under the First and Fourteenth Amendments to the Constitution of the United States, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The

Court has supplemental jurisdiction over plaintiffs' causes of action arising under the Constitution of the Commonwealth of Pennsylvania pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because one or more defendants resides in this District, all defendants reside in the Commonwealth of Pennsylvania and the events or omissions giving rise to the claims at issue occurred in this District.

3. Defendant Dover Area School District is a municipal corporation with a board of directors, which is defendant Dover Area School District Board of Directors. At all relevant times, defendants were acting under color of state law. The Dover Area School District is comprised of Dover Township, Washington Township, and Dover Borough, all in York County, Pennsylvania. There are approximately 3,700 students in the School District, with approximately 1,000 attending Dover High School.

4. On October 18, 2004, the board approved an amendment to the Dover High School biology curriculum by a vote of 6-3. Board members voting for the amendment were Alan Bonsell, Sheila Harkins, William Buckingham, Heather Geesey, Jane Cleaver, and Angie Yingling. Board members voting against the amendment were Noel Weinrich, Carol (Casey) Brown, and Jeff

Brown. The biology curriculum was revised as reflected in Plaintiffs' Exhibit 1, attached hereto.

5. The Dover Area High School has received sixty donated copies of *Of Pandas and People*. They were donated by Donald Bonsell, father of board member Alan Bonsell. William Buckingham wrote a check to Mr. Donald Bonsell to contribute to the purchase of the books.

6. All board meetings from 2003-2005 occurred on the dates reflected in the board minutes.

7. All votes on biology curriculum and the biology textbook during the years 2003-05 are correctly portrayed in the board minutes.

8. On November 19, 2004, the district issued the press release (Exhibit 2), attached hereto.

9. On January 18, 2005, administrators for the School District made the statement to 9th grade biology students set forth in Exhibit 3, attached hereto.

10. In June, 2005, administrators for the School District made the statement to 9th grade biology students set forth in Exhibit 4, attached hereto.

11. The Dover Area School District does not require the reading of similar statements for any other aspect of the science curriculum or as regards any other scientific theory.

12. During the week of February 14, 2005, the district mailed a newsletter (Exhibit 5) to all parents of students in the Dover Area School District regarding the change to the biology curriculum, which is attached hereto.

13. On April 23, 2005, at the request of the school board, Michael Behe made a presentation on intelligent design to Dover citizens.

14. The defendant Dover School Board has the authority to set official policy for the Dover Area School District. Accordingly, the October 18, 2004 Board resolution, the November 19, 2004 press release, the statements read to students, and the newsletter represent official policy of the Dover Area School District.

15. For any plaintiff not called to testify at trial, he or she would testify that the facts alleged about that particular plaintiff in paragraphs 3-10 of the Complaint were true for the 2004-05 school year. Those facts are:

- a. Plaintiff Tammy J. Kitzmiller is a resident of Dover, Pennsylvania. She is a parent of a child in the ninth grade and a child in the eleventh grade at Dover High School.
- b. Plaintiffs Bryan and Christy Rehm are residents of Dover, Pennsylvania. They are parents to a child in the eighth grade, a child in the second grade, a child in kindergarten in the Dover Area School District, and a child of pre-school age and intend for their children to attend Dover High School.
- c. Plaintiffs Deborah F. Fenimore and Joel A. Leib are residents of Dover, Pennsylvania. They are the parents

of a child in the twelfth grade at Dover High School and a child in the seventh grade in the Dover Area School District and intend for that child to attend Dover High School.

- d. Plaintiff Steven Stough is a resident of Dover, Pennsylvania. He is a parent of a child in the eighth grade in the Dover Area School District and intends for his child to attend Dover High School.
 - e. Plaintiff Beth A. Eveland is a resident of York, Pennsylvania. She is a parent of a child in the first grade in the Dover Area School District and a child of pre-school age and intends for her children to attend Dover High School.
 - f. Plaintiff Cynthia Sneath is a resident of Dover, Pennsylvania. She is a parent of a child in the first grade in the Dover Area School District and a child of pre-school age and intends for her children to attend Dover High School.
 - g. Plaintiff Julie Smith is a resident of York, Pennsylvania. She is a parent of a child in the tenth grade at Dover High School.
 - h. Plaintiffs Aralene (Barrie) D. and Frederick B. Callahan are residents of Dover, Pennsylvania. They are parents of a child in the tenth grade at Dover High School.
16. Each plaintiff not called to testify at trial would also testify.
- a. That all the facts alleged in the Complaint are also true for the 2005-06 school year, except that each child has advanced one grade.
 - b. That he or she received a copy of the newsletter.
 - c. That he or she perceives the DASD policy, including the change to the biology curriculum, the statement read to students, and the newsletter, as promoting and endorsing religion.

- d. That he or she perceives intelligent design to be a religious, non-scientific concept.

17. Tammy Kitzmiller would testify that her daughter opted out of biology class on January 18, 2005 when the statement was read to her class.

18. For purpose of any challenge to standing of parents whose only children were past the 9th grade prior to the amendment to the biology curriculum, the testimony of one such parent–plaintiff will be deemed representative of the injury claimed by all such parent-plaintiffs.

19. The April 1, 2003 memo authored by Trudy Peterman was received by Superintendent Richard Nilsen and Assistant Superintendent Michael Baksa.

20. No board member or district official ever sent a written request to any newspaper for a retraction or correction of any article reporting on issues relating to the biology curriculum.

21. Neither party will challenge the admissibility of any expert's testimony on the grounds that the expert is not qualified to testify on the subject matter described in the expert's report, except defendants reserve the right to challenge the admissibility of plaintiffs' expert Dr. Barbara Forrest on this basis. This stipulation will not in any way preclude the parties from arguing qualifications, credentials, experience or expertise as it relates to the weight to be accorded to any expert's testimony.

Respectfully submitted,

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ARALENE ("BARRIE") D. AND
FREDERICK B. CALLAHAN

Dated: August 24, 2005

EXHIBIT 1

**DOVER AREA SCHOOL DISTRICT
BIOLOGY I PLANNED INSTRUCTION/CURRICULUM GUIDE**

PART A

COURSE DESCRIPTION: The study of life

GRADE(S): 9 COURSE LENGTH: 90 days

DURATION: 90 minutes

FREQUENCY: daily

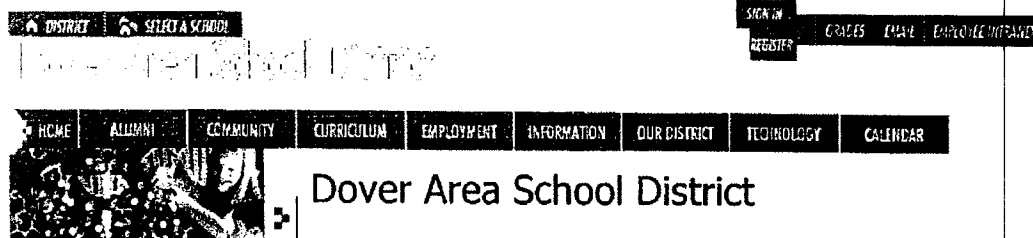
WRITTEN BY:

TIME (WEEKS/CLASSES)	UNIT CONTENT/CONCEPTS/ PROCESS	STATE STANDARD (NAT. STANDARD)	INSTRUCTIONAL STRATEGIES, LEARNING PRACTICES ACTIVITIES AND EXPERIENCES	MATERIALS AND RESOURCES
19 days	Chapter 10 – Natural Selection Chapter 11 – The Mechanism of Evolution Chapter 12 – The Origins of Biodiversity			
1 day	Students will be able to discuss Darwin's observations of the living world. Students will be able to discuss the variability found in nature.	3.3.10.D	Lecture Mini Lab	Textbook Graph paper
2 days	Students will be able to describe biomes and list the adaptations that organisms have to survive in this environment.	3.3.10.D.6	Research Student reports	Textbook Library Internet Art supplies
1 day	Students will be able to determine how limiting factors work to limit population sizes.	3.3.10.D.6	Lecture Student activity	Green peppers Worksheets Textbook
1 day	Students will be able to define types of competition and how they relate to population size.	3.3.10.D.6	Lecture Video	TV/VCR Video questionnaire
1 day	Students will be able to list evidences used to support Darwin's theory of the Origins of Species.	3.3.10.D.1	Lecture Lab	Evolution Worksheet Biochemical Evidence Lab
	Students will be made aware of gaps/problems in Darwin's Theory and of other theories of evolution including, but not limited to Intelligent Design.	3.3.10.D.1	Lecture	Reference: <u>Of Pandas and People</u>

Note: The Origins of Life is not taught.

Board Approved 10/18/04

EXHIBIT 2



**BOARD PRESS RELEASE FOR BIOLOGY CURRICULUM--11-19-04;
reposted 12-14-04**

**Dover Area Board of Directors
Biology Curriculum Press Release**



The Dover Area School District has issued the following statement concerning the District's Biology curriculum. The District had determined to delay any official pronouncement until the curriculum update and implementation were complete. The Dover Area School District has been committed to developing a curriculum that incorporates suggestions from the School Board, community, administration, teachers, and the District solicitor. The District now has a completed Biology curriculum and implementation procedure. In an attempt to clarify the District's policy and to correct any misinformation concerning the biology curriculum, the District states the following:

Over the past several months, the District's Board of Directors has been updating its Science and Biology curriculum and adopting and approving support materials, including textbooks. The School Board has undertaken considerable effort to develop and adopt a fair and balanced science curriculum. During the course of discussions about curriculum updates, numerous individuals and the media have made confusing, conflicting, and inaccurate statements. Many of these statements have been personal opinions or misinterpretations of District activities and curriculum directives. Some statements and opinions from the media, community members, and Board members, which are completely inaccurate or false, have been assumed to be official District policy or curriculum procedure. The following is the actual chronology of the District's Biology curriculum development process and implementation.

Teachers in the science department researched and recommended to the Administration the science textbook *Biology* (Prentice Hall) for its high school Biology class. The District adopted and purchased 220 copies of this teacher-and administration-recommended book.

The District also received a donation of 60 copies of *Of Pandas and People* (Houghton Publishing Company) and that book now is listed as a reference book in the curriculum. It is not a required text, but, in an effort to present a balanced curriculum, the book is made available to all students who wish to review it and the ideas that are presented in the text.

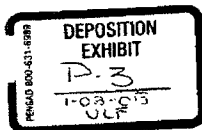
The Biology curriculum also was updated to include the following preliminary statement:

Students will be made aware of gaps/problems in Darwin's Theory and of other theories of evolution including, but not limited to, Intelligent Design. The Origins of Life is not taught.

In coordination with the science department teachers, the District solicitor, and the School Board, Mr. Michael Baksa, the Assistant Superintendent in charge of curriculum, developed the following procedural statement that will be read to all students as the new Biology curriculum is implemented beginning in January 2005:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.



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Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, Of Pandas and People, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments.

The foregoing statements were developed to provide a balanced view, and not to teach or present religious beliefs. The Superintendent, Dr. Richard Nilsen, has directed that no teacher will teach Intelligent Design, Creationism, or present his or her, or the Board's, religious beliefs. The Dover Area School District supports, and does not discriminate against, students and parents who have competing beliefs, especially in the area of the Origin of Life debate. The School Board has noted that there are opinions other than Darwin's on the Origin of Life. School districts are forums for inquiry and critical discussions. The above statement and the District's revised Biology curriculum together provide an opportunity for open critical discussion--the real heart of scientific practice.

Mr. Baksa and Dr. Nilsen will monitor instruction to ensure that religion is neither inhibited nor promoted.

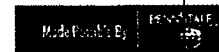
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Questions or Feedback?

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EXHIBIT 3

ADMINISTRATOR'S BIOLOGY STATEMENT
IN BIOLOGY CLASS

1/18/05

1. Good morning/afternoon. I am, ^{MR. BAKSA} ~~Mr. Joel Riedel~~ and standing over there is Dr. Richard Nilsen and ~~Mr. Michael Baksa~~. ^{or Mr. Riedel}
2. You will soon begin to study Evolution in the class and the Board of School Directors has directed that the following statement be read. The statement is currently under litigation therefore; the administration is reading the statement not the teacher.
3. A letter went home asking if anyone had a problem with the statement and I would like to make sure at this time that everyone who would prefer not to hear the statement is now out of the classroom, anyone else?
4. Ok, the statement:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, Of Pandas and People, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments.

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5. As noted in the last paragraph of the statement there will be no other discussion of the issue and your teachers will not answer any questions on this issue. If you or your parents have any questions, they can contact Dr. Nilsen, Mr. Baksa or Mr. Riedel.
6. Thank you and have a nice day.

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EXHIBIT 4

**ADMINISTRATOR'S BIOLOGY STATEMENT
IN BIOLOGY CLASS
(June 2005)**

1. Good morning/afternoon. I am, Dr. Richard Nilsen and Mr. Michael Baksa is standing over there.
2. You will soon begin to study Evolution in the class and the Board of School Directors has directed that the following statement be read. The statement is currently under litigation therefore; the administration is reading the statement not the teacher.
3. A letter went home asking if anyone had a problem with the statement and I would like to make sure at this time that everyone who would prefer not to hear the statement is now out of the classroom, anyone else?
4. Ok, the statement:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent Design is an explanation of the origin of life that differs from Darwins view. The reference book, Of Pandas and People, is available in the library along with other resources for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessment.
5. As noted in the last paragraph of the statement there will be no other discussion of the issue and your teachers will not answer any questions on the issue. If you or your parents have any questions, they can contact Dr. Nilsen, Mr. Baksa or Mr. Riedel.
6. Thank you and have a nice day.

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EXHIBIT 5

Dover Area School District News

February 2005

Biology Curriculum Update

This newsletter has been produced to help explain the changes in the biology curriculum. Unfortunately a great deal of misinformation has been spread regarding this policy. We hope this publication will help those interested better understand the substance of the policy. While eliminating misconceptions some may have about the curriculum changes, we strongly appreciate your understanding on this matter.

Sen. Santorum Applauds Dover District

By Sen. Rick Santorum

The following editorial appeared in the 1/22/04 edition of the Pittsburgh Post-Gazette:

A recent [Pittsburgh] Post-Gazette editorial was completely inaccurate in describing the York County district's decision regarding the teaching of evolution and indulging in rhetoric instead of engaging in a reasoned debate on the issues. The fact is that the Dover Area School District will

scientific theory that is open to scrutiny, not so sacred dogmas that cannot be questioned. But is there a real scientific dispute? Absolutely. Recently, over 300 scientists, including scholars from Yale, Princeton, MIT and the Smithsonian, signed a public statement declaring that they were "skeptical of claims for the ability of narrow scientific and natural selection to account for the complexity of life" and encouraging "careful examination of the evidence for Darwinian theory."

alternative scientific theories in the classroom. In 1987, the U.S. Supreme Court made clear in *Edwards v. Aguillard* that "we do not imply that a legislature could never require that scientific criticisms of prevailing scientific theories be taught."

A 2001 Zogby poll shows that 71 percent of Americans believe that "biology teachers should teach Darwin's theory of evolution, but also the scientific evidence against it." Even more overwhelming is a 2004 Steinberg Poll showing 73 percent of California voters believe that biology teachers in public schools should teach the scientific evidence for and against Darwin's theory of evolution.

Ultimately, academic freedom is at stake. Students should learn both the strengths of Darwinian evolution, as well as the theory's scientific weaknesses. It is beneficial for our students to discuss the existing unanswered questions surrounding evolution. If we want our students to become educated citizens, we should all support an open, engaging and broad discussion of evolution theory in our public schools. I commend the Dover Area School District for taking a stand and refusing to ignore the controversy.

Frequently Asked Questions

What is all the fuss about?

A small minority of parents have objected to the recent curriculum change by arguing that the Board has acted to impose its own religious beliefs on students. This is not true. The approved statement read to students was adopted to present a balanced science curriculum and forbids any presentation of religious belief.

Students are told of the theory of Intelligent Design (ID). Isn't ID already religion in disguise?

No. The theory of intelligent design involves science vs. science, where scientists looking at the same data come to different conclusions. The theory does not mention or discuss God, Christianity or the Bible in any way.

What is the theory of evolution?

The word evolution has several meanings, and those supporting Darwin's theory of evolution use that definition in definition to their advantage. Evolution can mean something as simple as change over time, which is not controversial, and is supported by most people.

Continued on page 2

"The school board simply has presented a balanced curriculum that makes students aware of the controversies surrounding evolution."

The school board simply has presented a balanced curriculum that makes students aware of the controversies surrounding evolution.

Let me be clear: I firmly believe that evolution should not be taught in public schools. Proponents of intelligent design theory believe that our public schools should teach our children more about evolution, including a candid assessment of the theory's unresolved difficulties. Evolution should be taught as a

2001, I offered report language ultimately removed to the No Child Left Behind Act that states, "Where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist, why such topics may generate controversy and how scientific discoveries can profoundly affect society."

Constitutional law also allows the teaching of

evolution that reflects a broad range of observations.

Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, *Of Pandas and People*, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school has the explanation of the *Origin of Life* to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments."

Text of Statement Read to Students

"The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part."

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested as-

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Frequently Asked Questions Continued

However, evolution is in biological terms, a process whereby life arose from non-living matter and subsequently developed by natural means, namely, natural selection, acting on random variations.

What is the theory of Intelligent Design?

The theory of intelligent design (ID) is a scientific theory that differs from Darwin's view, and is endorsed by a growing number of credible scientists. ID attempts to explain the complexity of the world by interpreting the scientific data now available to modern biologists. Its principle argument is that certain features of the universe are best explained by an intelligent cause, rather than unguided chance such as Darwin's theory of natural selection.

In simple terms, on a molecular level, scientists have discovered a purposeful arrangement of parts, which cannot be explained by Darwin's theory. In fact, since the 1950's, advances in molecular biology and chemistry have shown us that living cells, the fundamental units of life processes, cannot be explained by chance.

Even Bill Gates, computer software genius and founder of Microsoft, has said, "DNA is like a computer program but far, far, more advanced than any software we

have ever created."

Are Dover students taught the theory of Intelligent Design?

No. Perhaps the most widely misreported fact is that Dover school district requires the "teaching" of intelligent design.

Students are only made aware of the theory of ID during the one minute statement read prior to the sixth grade biology course (see front page). Students interested in learning more are able to do so by viewing books and materials available in the library.

Are there religious implications in the theory of ID?

Not any more so than the religious implications of Darwinism. Some have said that before Darwin, "we thought a benevolent God had created us. Biology took away our status as made in the image of God" ... or "What is the worth of a purposeless process that did not have him in mind. He was not planned." ... or "Darwinism made it possible to be an intellectually fulfilled atheist."

Is the DASD policy unconstitutional?

The last Supreme Court case dealing with the theory of evolution was the 1987 case of *Edwards v. Aguillard*.

Although that case held unconstitutional the teaching of creationism alongside Darwin's theory of evolution, it specifically held that schools can teach alternative to Darwin's approach to origins. The court stated that teaching a variety of scientific theories regarding the origins of life might be validly done with the clear understanding of evaluating the effectiveness of science education which is the goal of the Dover Area School District.

What about the lawsuit filed by the ACLU?

In December the district was served with a federal lawsuit filed by the American Civil Liberties Union on behalf of several parents of Dover students.

The Thomas More Law Center, a non-profit law firm based in Ann Arbor, MI has agreed to defend the district without charge.

Knowing there were complicated legal questions involved in the curriculum change, the statement was adopted to comply with the requirements of the law, while also providing students with the best possible science education. As the elected representatives of the citizens of Dover, the board was determined to set the best interest of students, despite threats from the ACLU. The lawsuit is being fought vigorously.

Administration: No Problems With Curriculum Implementation

On January 18 & 19, the curriculum change adopted by the Dover Area School Board on October 18 went into effect. Ninth grade students enrolled in biology were read a four paragraph, one minute statement approved by the Board. A copy of the statement read to students appears on the front of this publication.

Contrary to rumor and misleading news reports, after the statement was read, students were instructed on the theory of evolution no

difficultly than in years past. No teacher was instructed to teach the theory of intelligent design or present his or her religious beliefs.

As previously explained, the purpose of the curriculum change was to provide students with a fair and balanced science curriculum. On that basis, the school board voted to make students aware of the scientific controversy surrounding the theory of evolution in a manner which they believed to be objective and neutral.

Parents of students with concerns about the one-minute statement were permitted to discuss their children from that portion of the class. Of the 175 students who are enrolled in the course, parents of 15 students requested their students be kept out of hearing the statement.

We are pleased that the curriculum change occurred without incident, and appreciate the cooperation and tremendous support of both parents and students.

Quotables

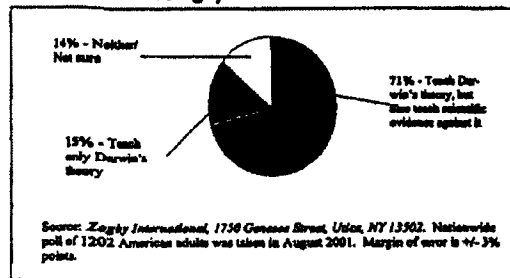
"The Dover Area School District has taken a step in the right direction by attempting to teach the controversy of evolution."
- Sen. Rick Santorum

"[DNA] has shown, by the almost unbelievable complexity of the arrangements which are needed to produce (life), that intelligence must have been involved...by which life has been guided by the principles of Plato's *Symposium*: Follow the evidence, wherever it leads."

-Anthony Flew (world famous atheist who now admits the universe appears to have an intelligent design)

"Where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist." (Conference Report from the No Child Left Behind Act of 2001)

2001 National Zogby Poll



For more information on this topic, please visit our libraries and/or our website at www.dasd.k12.pa.us

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